

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 10-888V

Filed: April 19, 2013

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NOT TO BE PUBLISHED

AMANDA HOWRY, parent of  
L.H, a minor

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Petitioner,

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v.

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SECRETARY OF HEALTH  
AND HUMAN SERVICES,

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Respondent.

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Special Master Zane

Ruling on the Record; Diphtheria-  
Tetanus-acellular- Pertussis  
("DTaP"); seizure disorder;  
developmental delays;  
gene mutation

*Amy Fashano, Conway, Homer, & Chin-Caplan, P.C., Boston, MA, for Petitioner*  
*Chrysovalantis Kefalas, United States Dep't of Justice, Washington, DC, for Respondent*

### **UNPUBLISHED DECISION DISMISSING CASE<sup>1</sup>**

On December 30, 2010, Amanda Howry ("Petitioner"), filed a petition for compensation on behalf of her son, L. H., under the National Childhood Vaccine Injury Act of 1986 ("the Vaccine Act"), 42 U.S.C. § 300a-10, *et seq.*, as amended. Petitioner alleged that her son suffered a seizure disorder and developmental delays as a result of receipt of Diphtheria-Tetanus-

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<sup>1</sup> Because this decision contains a reasoned explanation for the Special Master's action in this case, the Special Master intends to post it on the website of the United States Court of Federal Claims, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 113 Stat. 2899, 2913 (Dec. 17, 2002). All decisions of the Special Master will be disclosed and made available to the public unless they contain trade secret or commercial or financial information that is privileged and confidential, or medical and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy. When such a decision or designated substantive order is filed, a party has 14 days to identify and to move to redact such information before the document's disclosure. If the Special Master, upon review, agrees that the identified material fits within the categories listed above, the Special Master shall redact such material from public access. 42 U.S.C. § 300aa-12 (d) (4); Vaccine Rule 18 (b). In the absence of a motion or should the Special Master disagree with the proposed redaction, the decision shall be disclosed in its entirety.

acellular-Pertussis (“DTaP”) vaccination on January 3, 2008. Petition at ¶ 2,3. For the reasons set forth below, the undersigned finds that Petitioner is not entitled to compensation and dismisses her case.

## **I. BACKGROUND**

Petitioner originally filed her petition on December 30, 2010. Subsequently, outstanding medical records were filed on or before January 9, 2012. Petitioner moved for several enlargements of time to extend the deadlines to file additional medical records. All such motions were granted. Additional medical records were filed by Petitioner in April and May of 2012. On July 9, 2012, Respondent filed a report pursuant to Vaccine Rule 4 (c), stating, *inter alia*, that the injury suffered by Petitioner’s son is not a table injury, and therefore, there is no presumption of the causation between the vaccines received and the injuries suffered by Petitioner’s son. *See* Respondent’s Rule 4 report at 10. Additionally, Respondent stated that Petitioner failed to prove by a preponderance of evidence that her son’s injury was caused-in-fact by the vaccinations he received on January 3, 2008, because Petitioner failed to provide a reliable medical theory causally connecting her son’s vaccinations with his medical condition, and failed to establish a logical sequence of cause and effect showing that the vaccines caused her son’s injury. *See id* at 14. Additionally, Respondent asserted that because Petitioner’s son has a genetic mutation that represents an alternate cause of his seizure disorder, Petitioner failed to rule out other potential causes in order to establish a *prima facie* case. *Id.* at 13. Therefore, Respondent concluded that compensation is not appropriate in this case. *Id.* at 14.

On August 21, 2012, Petitioner was ordered to file any outstanding medical records within ninety (90) days. Petitioner filed additional medical records in August, September, and October of 2012. Petitioner was ordered to file an expert report before November 28, 2012. On November 26, 2012, Petitioner filed a Motion for an Extension of Time which stated that Petitioner’s counsel was not intending to proceed with the entitlement portion of this case. Petitioner wanted to proceed with searching for alternate counsel. Petitioner’s motion was granted and subsequently Petitioner moved for several enlargements of time to extend the deadlines to find alternate counsel. All such motions were granted.

At a status conference on April 16, 2013, at which Petitioner herself participated, Petitioner’s counsel advised that Petitioner intended to dismiss the case by filing a Motion for Ruling on the Record. Respondent advised that she consented to such a motion. Petitioner advised that she concurred in her counsel’s representations and acknowledged that she intended to seek to have her action dismissed by obtaining a decision based on a motion for ruling on the record. On April 17, 2013, Petitioner filed an unopposed Motion for Decision Dismissing the Petition (“Motion for Decision”). *See* Petitioner’s Motion for Decision. This matter is now before the undersigned for decision.

## II. DISCUSSION

Having considered Petitioner's unopposed motion, the undersigned hereby grants Petitioner's motion for a ruling on the record and enters this ruling based upon the entire record. Vaccine Rule 8(d).

To be awarded compensation under the Vaccine Act, a petitioner must prove either: 1) that he suffered a "Table Injury," *i.e.*, an injury falling within the Vaccine Injury Table – corresponding to one of the vaccinations in question, or 2) that any of his medical problems were actually caused or significantly aggravated by the vaccination(s) at issue. *See* 42 U.S.C. §§ 300aa-11(c)(1) and 300aa-13(a)(1)(A).

Actual causation must be proved by preponderant evidence demonstrating that the subject vaccination caused the petitioner's injury by showing: "(1) a medical theory causally connecting the vaccination and the injury; (2) a logical sequence of cause and effect showing that the vaccination was the reason for the injury; and (3) a showing of a proximate temporal relationship between vaccination and injury." *Althen v. Sec'y of Health & Human Servs.*, 418 F.3d 1274, 1278 (Fed. Cir. 2005). The logical sequence of cause and effect must be supported by "reputable medical or scientific explanation." *Id.*, quoting *Grant v. Sec'y of Health & Human Servs.*, 956 F.2d 1144, 1148 (Fed. Cir. 1992). A petitioner may not be awarded compensation based on petitioner's claims alone. 42 U.S.C. § 300aa-13(a)(1). Rather, the petition must be supported by either medical records or by the opinion of a competent physician. *Id.*

An examination of the record demonstrates that it does not contain medical records or a medical opinion sufficient to demonstrate that Petitioner's son was injured as a result of receipt of the DTaP vaccine. First, neither seizure disorder nor developmental delay is a "Table Injury" associated with Petitioner's son's received vaccination, 42 C.F.R. § 100.3(a) (2011), and Petitioner did not claim that her son suffered a "Table Injury."

Second, Petitioner has not demonstrated that her son's injuries were caused in-fact by his receipt of the DTaP vaccination. Specifically, genetic testing determined that petitioner's son had a CDKL5 gene mutation which represents an alternate cause for his seizure disorder. Pet. Ex. 10 at 125; Ex. 13-1 at 2, 5. Moreover, none of Petitioner's son's treating physicians opined that his injuries were caused or significantly aggravated by the vaccinations he received. *See* Exs. 1-24. Finally, Petitioner has not submitted an expert report and, by filing this Motion for Decision Dismissing the Petition, has indicated that she will not submit an expert report supporting her claim that the DTaP vaccination caused her son's injuries.

Based on the review of the record as a whole, Petitioner has failed to prove by preponderant evidence that her son suffered a "Table Injury" or that his condition was "actually caused" by the vaccination.

**Petitioner's claim for compensation is DENIED, and this case is DISMISSED for insufficient proof.** In the absence of a motion for review, the Clerk of the Court is directed to enter judgment accordingly.<sup>2</sup>

**IT IS SO ORDERED.**

/s/ Daria J. Zane  
Daria J. Zane  
Special Master

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<sup>2</sup> This document constitutes a final “decision” in this case pursuant to 42 U.S.C. § 300aa-12(d)(3)(A). Unless a motion for review of this decision is filed within 30 days, the Clerk of the Court shall enter judgment in accordance with this decision. Pursuant to Vaccine Rule 11(a), the parties can expedite entry of judgment by each party filing a notice renouncing the right to seek review by a United States Court of Federal Claims judge.